

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SHERYL DOUGHTY,

Plaintiff,

v.

VALERIE HOLDER, et al.,

Defendants.

CATHERINE L. MILLER,

Plaintiff,

v.

LAUREN DAVIDSON  
HUMPHREYS, et al.,

Defendants.

KEVIN MILLER,

Plaintiff,

v.

LAUREN DAVIDSON  
HUMPHREYS, et al.,

Defendants.

} NO. 2:13-cv-00295-LRS

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

} NO. 2:13-cv-00296-LRS

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

} NO. 2:13-cv-00297-LRS

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

28 **ORDER GRANTING DEFENDANTS'  
MOTIONS FOR SUMMARY JUDGMENT- 1**

1           **BEFORE THE COURT** are the Defendants' Motions For Summary  
 2 Judgment (ECF No. 9 in CV-13-295-LRS; ECF No. 10 in CV-13-296-LRS; ECF  
 3 No. 9 in CV-13-297-LRS). Telephonic oral argument was heard on January 9,  
 4 2014. Kirk D. Miller, Esq., argued for the Plaintiffs. Robert R. Rowley, Esq.,  
 5 argued for the Defendants.

6

7           **I. BACKGROUND**

8           These three actions have been consolidated for pre-trial proceedings. They  
 9 involve the same fact pattern and the same claims under the Fair Debt Collection  
 10 Practices Act (FDCPA), 15 U.S.C. §1692 *et seq.*. Each of these actions arises out  
 11 of one of two actions for judicial foreclosure of a deed of trust filed in Spokane  
 12 County Superior Court.

13           Cheryl and Michael Doughty were named as defendants in Spokane County  
 14 Superior Court Cause No. 12-2-02772-7, filed on behalf of Wells Fargo Bank,  
 15 N.A., by Valerie I. Holder, Esq., of the law firm of Routh Crabtree Olsen, P.S.  
 16 (aka "RCO Legal P.S."). "Sheryl Doughty" was served with a summons and  
 17 complaint in the belief that she was the "Cheryl Doughty" named in the complaint.  
 18 The Spokane County Superior Court dismissed "Sheryl Doughty" as a defendant  
 19 on the basis she was not named as a party, but maintained the action as to "Cheryl  
 20 Doughty." (See Defendants' Statement of Material Facts at ECF No. 20). Valerie  
 21 Holder and RCO Legal, P.S., are the named Defendants in CV-13-295-LRS.

22           The complaint filed in Spokane County Superior Court Cause No. 12-2-  
 23 02772-7 alleges that Cheryl Doughty and Michael Doughty were respectively  
 24 daughter and son of Raoul Jack Doughty, the deceased borrower in regard to the  
 25 subject deed of trust, and that they "may claim an interest in the real property . . .  
 26 based upon the law of intestate succession." Cheryl and Michael Doughty were  
 27 named as defendants in order to divest them of their potential interests in the

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1 property. The complaint seeks a “Judgment For Monies Due” against the  
2 defendants, and if that monetary judgment is not satisfied immediately, a “Decree  
3 Of Foreclosure” allowing for sale of the real property with the proceeds thereof  
4 applied against the monetary judgment. The complaint specifies that plaintiff  
5 Wells Fargo, pursuant to RCW 6.23.020(1), waives any right to a deficiency  
6 judgment. Paragraph 4 of the “Prayer For Relief” states: “[I]f any deficiency  
7 remains after application of the proceeds of such sale thereon, Plaintiff expressly  
8 waive a deficiency judgment and that no deficiency judgment be entered against  
9 the defendants pursuant to RCW 6.23. 020(1).”

10 Catherine L. Miller was named as a defendant in Spokane County Superior  
11 Court Cause No. 12-2-02845-6, filed on behalf of OneWest Bank, FSB, by Lauren  
12 Davidson Humphreys, Esq., of the law firm of Routh Crabtree Olsen, P.S. (aka  
13 “RCO Legal P.S.”). Humphreys and RCO Legal, P.S., are the named Defendants  
14 in CV-13-296-LRS and CV-13-297-LRS. Kevin Miller, although not specifically  
15 named as a defendant in Spokane County Superior Court Cause No. 12-2-02845-6,  
16 became a defendant by virtue of being an “Occupant[] Of The Premises” to which  
17 the particular deed of trust pertains.

18 The complaint filed in Spokane County Superior Court Cause No. 12-2-  
19 02845-6 alleges that Catherine L. Miller was believed to be the daughter of Helen  
20 R. Peterson, the deceased borrower in regard to the subject deed of trust, and that  
21 she “may claim an interest in the real property . . . based upon the law of intestate  
22 succession.” Kevin Miller, although not specifically named a defendant, became a  
23 defendant by virtue of being an “Occupant[s] Of The Premises” who “may claim  
24 an interest in the real property.” The Millers were named/identified as defendants  
25 in order to divest them of their potential interests in the property. The complaint  
26 seeks a “Judgment For Monies Due” against the defendants, and if that monetary  
27 judgment is not satisfied immediately, a “Decree Of Foreclosure” allowing for sale

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1 of the real property with the proceeds thereof applied against the monetary  
 2 judgment. The complaint specifies that plaintiff OneWest Bank, pursuant to RCW  
 3 6.23.020(1), waives any right to a deficiency judgment. Paragraph 4 of the  
 4 “Prayer For Relief” states: “[I]f any deficiency remains after application of the  
 5 proceeds of such sale thereon, Plaintiff expressly waives a deficiency judgment  
 6 and that no deficiency judgment be entered against the defendants pursuant to  
 7 RCW 6.23. 020(1).”

8 Plaintiffs allege Defendants are “debt collectors,” as defined in 15 U.S.C.  
 9 Section 1692a(6) of the FDCPA; that they attempted to collect a “debt” from  
 10 Plaintiffs, as defined in 15 U.S.C. Section 1692a(5); and that this was in violation  
 11 of the FDCPA because there was no “debt” due and owing by the Plaintiffs.  
 12 Defendants move for summary judgment claiming that in these particular  
 13 circumstances, they were not acting as “debt collectors” as defined in the FDCPA.<sup>1</sup>  
 14

## 15 II. DISCUSSION

16 15 U.S.C. §1692a(6) provides in relevant part:

17       The term “debt collector” means any person who uses any  
 18 instrumentality of interstate commerce or the mails in any  
 19 business, the principal purpose of which is the collection of  
 20 any debts, or who regularly collects or attempts to collect,  
 21 directly or indirectly, debts owed or due or asserted to be  
 22 owed or due another . . . **For the purpose of section 1692f(6)**  
 23 **of this title, such term also includes any person who uses**  
 24 **any instrumentality of interstate commerce or the mails**

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25       <sup>1</sup> Defendants did not, as required by the court’s local rules, include a  
 26 Statement of Facts with their summary judgment motions, and filed ones only in  
 27 conjunction with their replies. There is no basis, however, for striking  
 28 Defendants’ motions. Plaintiffs have not been prejudiced because it is apparent  
 that all of the material facts are undisputed.

1                   **in any business the principal purpose of which is the**  
 2                   **enforcement of security interests.**

3                   (Emphasis added).

4                   15 U.S.C. Section 1692f(6) provides that the following is an “unfair  
 5                   practice” under the FDCPA:

6                   Taking or threatening to take any **nonjudicial** action to effect  
 7                   dispossession or disablement of property if –

8                   (A) there is no present right to possession of the property  
 9                   claimed as collateral through an enforceable security interest;

10                  (B) there is no present intention to take possession of the  
 11                  property; or

12                  (C) the property is exempt by law from such dispossess or  
 13                  disablement.

14                   (Emphasis added).

15                  In *Barbanti v. Quality Loan Service Corp.*, 2007 WL 26775 (E.D. Wash.  
 16                  2007) at \*3, the Hon. Edward F. Shea of this district was “persuaded that the  
 17                  inclusion of an enforcer of a security interest in §1692f(6) implies that the term  
 18                  “debt collector” [defined in §1692a(6)] does not include an enforcer of a security  
 19                  interest for any other section of the FDCPA.” Accordingly, Judge Shea  
 20                  “determine[d] that the enforcement of a security interest through a nonjudicial  
 21                  forfeiture does not constitute the collection of a debt for purposes of the FDCPA.”  
 22                  This remains the prevailing view within the Ninth Circuit. “Although the Ninth  
 23                  Circuit has yet to address whether foreclosure proceedings constitute ‘debt  
 24                  collection’ within the ambit of the FDCPA, the majority of the courts in this  
 25                  District [N.D. of Calif.], as well as many other courts in this Circuit, have held that  
 26                  non judicial foreclosure proceedings are not debt collection.” *Natividad v. Wells*  
 27                  *Fargo Bank, N.A.*, 2013 WL 2299601 (N.D. Cal. 2013) at \*5. “[F]or purposes of  
 28                  the [FDCPA] a ‘debt collector’ does not include one engaged in the mere  
 29                  enforcement of security interests.” *Id.* at \*6. If conduct goes beyond “mere

1 enforcement of security interests,” however, it will constitute “debt collection”  
 2 under the FDCPA. Thus, “persons who regularly or principally engage in  
 3 communications with debtors concerning their default that go beyond the  
 4 statutorily mandated communications required for foreclosure may be considered  
 5 debt collectors.” *Id.* at \*8.

6 It is immaterial that the captioned actions before this court involve  
 7 enforcement of security interests through judicial foreclosure proceedings instead  
 8 of through non-judicial forfeiture. So long as the foreclosure proceedings, be they  
 9 non-judicial or judicial, involve no more than mere enforcement of security  
 10 interests, the FDCPA does not apply. Plaintiffs contend, however, that the  
 11 judicial foreclosure proceedings at issue here involve more than mere enforcement  
 12 of security interests and therefore, fall within the purview of the FDCPA.  
 13 According to Plaintiffs, this is so because the state court judicial foreclosure  
 14 complaints demand a money judgment against all of the defendants, even those  
 15 who never signed, and are not obligors on, the underlying promissory notes.

16 Each of the state court complaints at issue here sets forth two causes of  
 17 action: 1) “Judgment For Monies Due;” and 2) “Decree Of Foreclosure.” The  
 18 “Judgment For Monies Due” causes of action in each of the complaints state:

19       The Note and Deed of Trust are in default, and the Note  
 20       obligation has been accelerated.

21       Demand for all sums secured by the Note and Deed of Trust  
 22       has been made, and the Unknown Heirs of Helen R.  
      Peterson [and the Unknown Heirs and Devisees of Raoul  
      Jack Doughty] have failed to pay.

23       Both of the complaints then go on to plead the “Decree Of Foreclosure”  
 24 cause of action as follows:

25       If a judgment for monies due is filed with this Court and the  
 26       defendants named herein fail to immediately tender the sum  
      due and owing, then Plaintiff asserts its right per the terms of  
      the Deed of Trust for the court to enter a decree of foreclosure.

27

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1           ...

2           In the event of foreclosure and sale of the Property, Plaintiff is  
 3           permitted to become a bidder and purchaser at the sale and the  
 4           purchaser at the sale is entitled to immediate possession of the  
 5           Property and, upon motion of purchaser when the Property is  
 6           not vacated so that purchaser may take possession, the court  
 7           should forthwith order the Clerk of the Court to issue a writ of  
 8           assistance ordering the Sheriff to deliver possession of the  
 9           Property to the purchaser.

10          The “Prayer For Relief” in both of the state court complaints asks for a  
 11         judgment against the defendants in the amount due and owing on the promissory  
 12         notes, along with unpaid interest. The “Prayer” then goes on to ask “[t]hat in the  
 13         event the judgment is not paid immediately upon its entry, Plaintiff’s Deed of  
 14         Trust be foreclosed and the Property covered thereby be sold at foreclosure sale in  
 15         the manner provided by law, and the proceeds thereof be applied to the judgment .  
 16         ...”

17          The aforementioned language from the state court complaints has been  
 18         quoted in order to highlight the difference between a “foreclosure judgment,”  
 19         which is *quasi in rem* in nature<sup>2</sup>, versus a deficiency judgment, which is *in  
 20         personam* in nature. As Defendants point out, the “foreclosure judgment” is a  
 21         money judgment for the purpose of for setting the bid parameters for a foreclosure  
 22         sale. The purpose of this “foreclosure judgment” does not create a monetary  
 23         obligation upon the defendants against whom it is entered, but basically tells those

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22          <sup>2</sup> Black’s Law Dictionary (6<sup>th</sup> Ed. 1990 at pp. 793-94) defines “quasi in rem”  
 23         as follows:

24          A term applied to proceedings which are not strictly and purely  
 25         *in rem*, but are brought against the defendant personally, **though  
 26         the real object is to deal with particular property or subject  
 27         property to the discharge of claims asserted**; for example,  
 28         foreign attachment, **or proceedings to foreclose a mortgage,  
 29         remove a cloud from title, or effect a partition.**

(Emphasis added).

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1 defendants that this is the amount due and owing on the promissory note and  
 2 unless that amount is tendered to plaintiff, there will be a foreclosure and the real  
 3 property will be sold to satisfy the “foreclosure judgment,” that being the  
 4 obligation found to be secured by the deed of trust. “Payment of funds is not the  
 5 object of the foreclosure action. Rather, the lender is foreclosing its interest in the  
 6 property.” *Hulse v. Ocwen Federal Bank, FSB*, 195 F.Supp.2d 1188, 1204 (D. Or.  
 7 2002).

8 A deficiency judgment is distinct from a foreclosure judgment. See 18  
 9 Wash. Prac., Real Estate, §19.17 (2<sup>nd</sup> Ed.), and 28 Wash. Prac., Creditor’s  
 10 Remedies-Debtors’ Relief, § 7.43 (2<sup>nd</sup> Ed.). As noted, the state court complaints  
 11 involved here specifically waived seeking a deficiency judgment against any of the  
 12 defendants. A deficiency judgment “arises if the amount of a judgment in a  
 13 judicial foreclosure exceeds the value of the security at the foreclosure sale.  
 14 *Boeing Employees’ Credit Union v. Burns*, 167 Wn.App. 265, 282, 272 P.3d 908  
 15 (2012). Once obtained, a deficiency judgment is “similar in all respects to other  
 16 judgments for the recovery of money.” RCW 61.12.080. “As in the mortgage  
 17 foreclosure context, ‘deficiency judgment’ under RCW 61.24.100 means a money  
 18 judgment sought by a trust deed beneficiary (or other creditor) following a  
 19 trustee’s sale that fails to satisfy the obligation secured by the deed of trust.”  
 20 *Gardner v. First Heritage Bank*, 175 Wn.App. 650, 661, 303 P.3d 1065 (2013). In  
 21 *Gardner*, the Washington Court of Appeals concluded that a “deficiency  
 22 judgment” for purposes of RCW 61.24.100’s antideficiency provision means a  
 23 money judgment against a debtor for a recovery of the secured debt measured by  
 24 the difference between the debt and the net proceeds received from the foreclosure  
 25 sale.” *Id.* In a footnote, the court observed that the term “money judgment” is  
 26 ///  
 27 ///  
 28

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1 synonymous with the term “personal judgment.” *Id.* at n. 20.<sup>3</sup>

2 In sum, a “foreclosure judgment,” even though it involves a monetary  
 3 amount, is for the purpose of enforcing the creditor’s security interest through a  
 4 foreclosure. It is *quasi in rem*. The monetary amount establishes the bid  
 5 parameters for the foreclosure sale. On the other hand, a deficiency judgment  
 6 follows foreclosure of the security interest. It is not for the purpose of enforcing  
 7 the security interest, but for seeking payment of funds to make up a shortfall  
 8 between the proceeds obtained from the foreclosure sale and the amount of the  
 9 foreclosure judgment. It is an action to collect a debt. It is *in personam* and if  
 10 Defendants had sought a deficiency judgment against Plaintiffs, Defendants may  
 11 well qualify as “debt collectors” as defined in the FDCPA. See *Derisme v. Hunt*  
 12 *Leibert Jacobson P.C.*, 880 F.Supp.2d 311, 326 (D. Conn. 2012) (“This Court  
 13 agrees that where there is an attempt to collect money in addition to enforcement  
 14 of a security interest, the other provisions of the FDCPA might apply to the  
 15 conduct related to the collection of money”).<sup>4</sup>

16 The Defendants here cannot be considered “debt collectors” under the  
 17 FDCPA. The judicial foreclosure complaints filed by them sought only to enforce  
 18 security interests via obtainment of a foreclosure judgment to be followed by a  
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21       <sup>3</sup> Black’s Law Dictionary (6<sup>th</sup> Ed. 1990 at p. 791) defines “in personam” as  
 22 follows:

23           Against the person. Action seeking judgment against a person  
 24 involving his personal rights and based on jurisdiction of his  
 25 person . . . .

26       <sup>4</sup> The “other” provisions include 15 U.S.C. Section 1692f(6), as well as  
 27 those which apply in general to “debt collectors,” not just those engaged “in any  
 28 business the principal purpose of which is the enforcement of security interests.”

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1 foreclosure sale.<sup>5</sup> Absent a foreclosure judgment against the individuals named as  
 2 defendants in the state foreclosure complaints, the secured creditors (Wells Fargo  
 3 and OneWest Bank) could not obtain title to the real property free of the those  
 4 named defendants' potential interests and have the property sold to satisfy the debt  
 5 owed by the deceased borrower. When a landowner dies, title to his/her property  
 6 immediately vests in his or her heirs. RCW 11.04.250. All parties with potential  
 7 interests in the property must be named in the foreclosure action in order to  
 8 properly divest them of those interests.

9 The state court complaints at issue here did not seek deficiency judgment  
 10 against anyone. Indeed, the complaints expressly waived the right to a deficiency  
 11 judgment, noting that because of this and pursuant to RCW 6.23.020(1), the  
 12 statutory redemption period should be eight months from the date of the sale "and  
 13 the Sheriff should be ordered to issue a Sheriff's Deed at the termination of the  
 14 eight-month period following the date of the Sheriff's sale." A "foreclosure" is a  
 15 process which is designed to cut off a debtor's equity of redemption. Black's  
 16 Law Dictionary (6<sup>th</sup> Ed. 1990 at p. 646).

17 Because the state court complaints sought only to foreclose the potential  
 18 interests of the individually-named defendants in the subject real property and did  
 19 not seek deficiency judgments against any of them, the Defendants in the  
 20

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21       <sup>5</sup> The scenarios at issue here, filing of judicial foreclosure actions after  
 22 default by a **deceased** borrower, are distinct from the scenarios in the cases cited  
 23 by Plaintiffs where the FDCPA was found to apply to certain collection activities  
 24 of lawyers after default by **living** borrowers, including informing those borrowers  
 25 how much must be paid to reinstate a mortgage, regularly seeking or obtaining  
 26 payments from such borrowers, or attempting to convince such borrowers to enter  
 27 into a mortgage loan modification agreement.

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captioned actions are not “debt collectors” under the FDCPA as they sought only to enforce the creditors’ security interests. In *Derisme*, 880 F.Supp.2d at 323, the court reached this same result based on its review of Connecticut law in a case where a law firm brought a judicial foreclosure action on behalf of its client, Bank of America, N.A.:

Since Hunt Leibert has not initiated deficiency proceedings under Connecticut’s statutory regime[,] the foreclosure action is solely an action in equity seeking the remedy of foreclosure and was never converted into an action at law seeking money damages. Therefore Hunt Leibert has sought only to enforce its client’s security interest in the foreclosure action and has not yet sought a money judgment. At most, Hunt Leibert has preserved its client’s ability to seek a deficiency judgment at a later time by including the claim in the complaint. However, since Hunt Leibert has not initiated deficiency proceedings . . . on its client’s behalf, it has not attempted to collect a debt in connection with the foreclosure action but instead has only sought to enforce its client’s security interest.

Citing Judge Shea’s decision in *Barbanti* and the District of Oregon’s decision in *Hulse*, among others, the Connecticut district court was persuaded that “the legislative history, plain meaning, statutory construction, and the [Federal Trade Commission’s] guidance support the conclusion that the enforcer of a security interest is only subject to §1692f(6) and not to any other section of the FDCPA.” 880 F.Supp.2d at 324-25. As noted above, §1692f(6) limits the circumstances under which the enforcer of a security interest is liable under the FDCPA. It provides that taking or threatening to take any non-judicial action to effect dispossession or disablement of property is an “unfair practice” if there is no present right to possession of the property claimed as collateral through an enforceable security interest; there is no present intention to take possession of the property; or the property is exempt by law from such dispossession or disablement.

Plaintiffs assert that “[a] sample of Defendants’ own form pleadings that have been filed in the Spokane County Superior Court reveal that these

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1 Defendants either knew or should have known that their demand for relief in the  
 2 form of money judgment against unobligated individuals was not a requirement”  
 3 and that “[t]hese defendants regularly file judicial foreclosure actions that do not  
 4 pray for money judgments against unobligated consumers,” referring to copies of  
 5 Spokane County Superior Court complaints found as Exs. 2-7 at ECF No. 15 in  
 6 CV-13-296-LRS.

7 As explained above, Defendants did not seek personal money judgments  
 8 against the Plaintiffs. Instead, Defendants sought a foreclosure judgment against  
 9 the Plaintiffs which required establishment of the monetary amount due and owing  
 10 on the underlying promissory note so as to establish the bid parameters for a  
 11 foreclosure sale unless the amount due and owing was tendered immediately.<sup>6</sup>

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12

13         <sup>6</sup> “[F]oreclosure actions on liens against Plaintiffs’ interests in their  
 14 properties, including any fees and costs arising directly from and solely because of  
 15 the foreclosures, did not seek monetary judgments against debtor-property owners  
 16 and consequently were not debt collection activities actionable under [the  
 17 FDCPA]. Rather, Defendants acted to enforce their security interests through  
 18 foreclosures of the Tax Liens and sale of the properties, from which proceeds  
 19 Defendants would obtain the tax lien amounts and attorneys’ fees and legal costs  
 20 that arose from the foreclosures.” *Boyd v. J.E. Robert Co.*, 2012 WL 4718723  
 21 (E.D. N.Y. 2012) at \*16. “Here, the foreclosure complaints did not request  
 22 monetary judgments against any of the plaintiffs for any deficiencies and instead  
 23 proceeded solely against the respective properties subject to the Tax Liens.” *Id.* at  
 24 \*18. “Foreclosure . . . is not the enforcement of the obligation because it is not an  
 25 attempt to collect funds from the debtor.” *Id.*, quoting *McDaniel v. South &*

26 *Associates, P.C.*

27 , 325 F.Supp.2d 1210, 1217 (D. Kan. 2004). Rather, the  
 28 foreclosure judgment establishes the amount that is due and owing on the

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1 Defendants sought to foreclose any interests the Plaintiffs had in the subject real  
 2 property. Defendants did not seek to collect a debt from any of the Plaintiffs  
 3 personally. They sought “mere enforcement of security interests.” They did not  
 4 engage in conduct “beyond that actually necessary to effectuate the foreclosure.”  
 5 *Memmott v. OneWest Bank, FSB*, 2011 WL 1560985 (D. Or. 2011), adopted as  
 6 modified, 2011 WL 1559298 (D. Or. 2011).

7 With regard to the Spokane County Superior Court complaints referred to  
 8 by Plaintiffs as examples of “judicial foreclosure actions that do not pray for  
 9 money judgments against unobligated consumers,” it is noted that with regard to  
 10 each of those complaints, the reason a foreclosure judgment was not sought  
 11 against any individually-named defendants was because there was an estate by  
 12 virtue of a probate having been filed subsequent to the death of the borrower. The  
 13 foreclosure judgment- “Judgment For Monies Due”- was properly sought against  
 14 the estate only. With regard to the Spokane County Superior Court complaints at  
 15 issue here (Cause Nos. 12-2-02772-7 and 12-2-02845-6), no probates were filed  
 16 and there were no estates against which a foreclosure judgment could be sought to  
 17 establish the bid parameters for a foreclosure sale. As such, the Defendants were  
 18 forced to seek a foreclosure judgment against all of the individuals who might  
 19 claim an interest in the real property. Had there been an estate, this would have  
 20 been unnecessary because an estate serves as a clearinghouse for all of the assets  
 21 of the estate and the potential interests in those assets. A foreclosure judgment  
 22 against an estate is a means by which all of potential interests in real property  
 23 belonging to the estate can be foreclosed.

24 Even assuming the Defendants are “debt collectors” under the FDCPA, this  
 25 court is not persuaded that a judicial foreclosure action which waives pursuit of a  
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27 obligation in order to establish the bid parameters for the foreclosure sale.  
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1 deficiency judgment constitutes an abusive collection practice prohibited by the  
 2 FDCPA. The express purpose of the FDCPA is “to eliminate abusive debt  
 3 collection practices by debt collectors . . .” 15 U.S.C. Section 1692(e). The  
 4 Connecticut district court in *Derisme* addressed that issue, noting as follows:

5 [T]he Court questions whether in view of the legislative  
 6 purposes underlying the FDCPA that the filing of a  
 7 state foreclosure proceeding constitutes the type of  
 8 abusive debt collection practices proscribed by the  
 9 FDCPA. It is also unclear to this Court that the  
 10 purposes of the FDCPA would be furthered by  
 11 applying the FDCPA to state foreclosure proceedings  
 12 considering the panoply of protections and safeguards  
 13 available to parties of a foreclosure action under  
 14 Connecticut law.

15 . . .

16 In sum, it does not appear that the purpose of the FDCPA  
 17 is furthered by its application to a Connecticut judicial  
 18 foreclosure action. While the FDCPA was designed to  
 19 protect unsophisticated consumers from unscrupulous  
 20 debt collectors, that purpose is not implicated when  
 21 a mortgagee is protected by the court system and the  
 22 Connecticut foreclosure law as was the case here.

23 880 F.Supp.2d at 327 and 329.

24 Here too, all that occurred is that Plaintiffs were served with a lawsuit filed  
 25 in Spokane County Superior Court in which they were named as defendants and  
 26 which was solely for the purpose of foreclosing their potential interests in the  
 27 subject real property. Nothing occurred of a non-judicial nature outside of the  
 28 statutory judicial foreclosure context: no phone calls were made to Plaintiffs  
 demanding payment, nor were any demand letters sent to them. Furthermore, at  
 this juncture, no judgment of any type arising from these lawsuits has been entered  
 against any of the Plaintiffs. Moreover, “Sheryl Doughty” has been dismissed  
 from the lawsuit filed under Spokane County Superior Court Cause No. 12-2-  
 02772-7. Accordingly, even assuming the FDCPA applies here, there have been  
 no abusive collection practices.

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### III. CONCLUSION

Defendants’ Motions For Summary Judgment (ECF No. 9 in CV-13-295-LRS; ECF No. 10 in CV-13-296-LRS; ECF No. 9 in CV-13-297-LRS) are **GRANTED**. Defendants were not acting as “debt collectors” as defined in the FDCPA, and therefore, they were not engaged in debt collection activities subject to the FDCPA. Alternatively, if they were acting as “debt collectors,” they did not engage in any abusive debt collection practice prohibited by the FDCPA. Defendants are awarded judgment on the FDCPA claims asserted against them by Plaintiffs. There is, however, no basis for an award of attorney’s fees to Defendants under the FDCPA, 15 U.S.C. Section 1692k(a)(3).<sup>7</sup>

**IT IS SO ORDERED.** The District Executive is directed to enter judgment accordingly and forward copies of the same and this order to counsel of record.

**DATED** this 21st of January, 2014.

*s/Lonny R. Suko*

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LONNY R. SUKO  
Senior United States District Judge

<sup>7</sup> At oral argument, Defendants' counsel advised that Defendants were abandoning their request for Fed. R. Civ. P. 11 sanctions.

## **ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT- 15**